

APPEAL NO. 020731
FILED MAY 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2002. The hearing officer determined that the appellant (claimant) is not entitled to receive supplemental income benefits (SIBs) for the eighth quarter, beginning November 2, 2001, and ending February 1, 2002. The claimant appeals, asking that the hearing officer's Decision and Order be reformed to eliminate Findings of Fact Nos. 3 through 9 and Conclusion of Law No. 3, and further reformed to find that the claimant is entitled to receive eighth quarter SIBs. The appeal is based on the claimant's belief that she made a good faith effort to seek employment during the qualifying period for the eighth quarter. The respondent (carrier) replies, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. As none of the exceptions applied to the claimant, she was required to look for work every week and document her job search efforts. The qualifying period for the eighth quarter extended from July 22 through October 20, 2001. The claimant documented 28 job searches, with at least two searches documented every week. She testified that she did not personally contact any prospective employers; she spent less than an hour a day looking through the newspaper classified advertisements; and she selected those jobs which she believed were within her restrictions, and notified her husband at work, who would then fax her resume to the prospective place of employment. The claimant did not send along a job application, and the only cover letter sent with the resume was prepared by her husband, was generic, and was unsigned. The hearing officer noted that the claimant did not have recent contact with either the Texas Workforce Commission or the Texas Rehabilitation Commission, and that her cooperation with the carrier's vocational counselor during the qualifying period was minimal.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's conclusion that the claimant did not make a good faith effort to seek employment during the qualifying period is supported by sufficient evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge